

CEdMA Certification SIG
Friday March 18, 2011
12:00 pm – 1:00 pm EST

ATP Conference Recap

Trends and Takeaways

Multiple Speakers

CEdMA Anti-trust Warning

CEdMA is a trade association which provides a unique opportunity for competitors to meet and discuss and learn from each other. Because of our status, however, we must exercise caution to assure that we protect CEdMA as an organization, as well as each of our individual members, from unintentional violations of the law. Please take a moment to review and familiarize yourselves with our [Antitrust Guidelines](#) on our website if you have any questions.

http://www.cedma.org/resources/DocuWorks/file_display.cfm?id=186

Proctored Remote Testing

An Update

- Innovative Exams
 - 2nd generation testing kiosk unveiled



IP Infringers

Legal update: 2008 litigation

- *Microsoft Corp. v. Test4cert Limited d/b/a www.pass4sure.com, et al.* (2008)
- “Digital Freeze” style case
 - Complaint
 - TROs
 - Conduct, Account/Asset Freezes, Domain Locks
 - Preliminary Injunction
- Modeled after software piracy cases
- Resolved by Agreement of the parties after entry of TROs
 - Permanent Injunction
 - Prohibited the sale of infringing materials
 - Financial component (amount confidential)



IP Infringers

Legal update: Round 2 (2009 – 2010)

- Pass4Sure round 2
 - Second permanent injunction
 - Prohibited ALL sales of anything related to or purporting to be related to Microsoft
 - Second financial component



IP Infringers

Legal update: Round 2 (2009 – 2010)

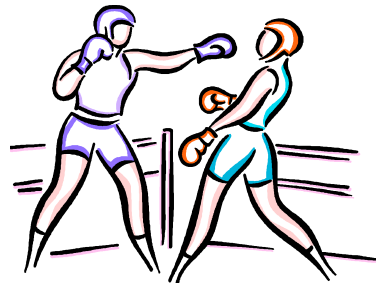
- TestKing round 2
 - Pending litigation
 - Independent action: breach of settlement agreement
 - Enforcement proceeding: Motion for Contempt of Permanent Injunction



Now It Gets Interesting

Certification Trendz vs. Zhou 2009 (“Let’s get ready to rumble”)

- TestKing sues Pass4Sure
- They used the same legal language used against them by Microsoft
 - Infringed by using, word for word, the same motions



Now It Gets Interesting

Certification Trendz vs. Zhou 2009 (“Let’s get ready to rumble”)

- Claims by TestKing
 - Copyright infringement
 - Trademark infringement
 - Reverse passing off
 - Constructive trust
 - Accounting
 - Unjust enrichment
- Relief requested
 - TROs and preliminary injunction
 - Freezing financial accounts and domain names
- Pass4Sure’s Defense
 - Unclean hands (You do it too!)

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What is a Candidate Agreement?

Do I need one?

- **Contract:** An agreement between two or more persons which creates an obligation to do or not to do a particular thing. A legal relationship consisting of the rights and duties of the contracting parties. *Black's Law Dictionary, Sixth Edition*
- Your agreement with test takers defines the relationship
- Memorializes your (and their) rights and obligations
- If done properly, makes expectations (and remedies) clear



Issues Unique to Internet-based Agreements

- Many test developers offer on-line exam registration
- In these cases, candidates often “click” to signify that they understand and agree to the terms of the candidate agreement
- Case law on web-based contracts (“click-through” agreements) is still developing, but courts do enforce them
- There are several practical steps you can take to minimize later legal challenges to your on-line contracts



Issues Unique to Internet-based Agreements

Best practices

- **Allowing user to view terms before agreeing.** Don't give the candidate the option of agreeing to the contract terms without first being presented with the terms. Terms should appear automatically or through a clearly visible, easy-to-use link. Require the candidate to navigate through the terms before agreeing.
- Don't provide full access to the registration site until the candidate has agreed to your terms.
- The terms should be easy to view, in clear and legible font
- **The terms should remain available.** The candidate should be able to read at their own pace and navigate forward and backward within the terms. No time limit or single viewing.
- Make the candidate choose between assent and rejection.
- **Use clear words of assent or rejection.** For example, "yes" or "no," or "I agree" or "I don't agree." Avoid vague choices like "continue" or "submit"



Candidate Agreements

Security considerations

- Are candidates on notice that sharing items is a breach?
- Are candidates on notice that studying from recalled items is improper?
- Did you reserve the right to invalidate scores? To take other action? To use data forensics? To use digital imagery?
- What are the candidate's rights?
- Do you remind the candidates of their obligations *before* and *after* the exam?



Large Item Pool Seeding

An approach by CompTIA

- Seeding large item pools (≈ 600) in large number of forms
- 1-2 publishing events a year
- Refresh forms once compromised
 - Large number of randomized items make IP theft challenging
 - Candidates do not know which item is scored vs. unscored
- Requires large number of items to seed at one time
 - Publication cost for each event
 - Psychometric costs for analysis and forms build



Rapid Form Republishing

An approach by CompTIA

- Rapid Form Republishing
 - 60 days
- Refresh forms continuously
 - Large number of beta items make memorization difficult
 - Candidates do not know which item is scored vs. unscored
 - Requires more frequent item creation events
 - Publication cost and resources for multiple events
 - Psychometric costs for analysis and forms build

Rapid Form Republishing

An approach by CompTIA

- Rapid Form Republishing
 - 45 days
- Plan: Refresh forms before compromised
 - Candidates do not know which item is scored vs. unscored
 - No wasted statistics or seeding time
 - Requires increased item creation events for the continuous seeding
 - Publication cost and resources for each 45 day event per product
 - Psychometric costs for analysis and forms build

